

<sup>1</sup> Mr. Ford also laid the foundation for a videotape exhibit which he said was an accurate representation of claimant's job. Claimant disputed its accuracy.

(2) Claimant described his engineering supervisor job with respondent as an engineer technician primarily engaged in the design of blasting equipment. His job mostly involved making computer drawings which he said required him to sit at a computer terminal for extended periods of time using a computer mouse and frequently turning his head left and right and moving it up and down.

(3) Claimant had worked for respondent for almost 10 years when in early November 1997 he began to notice symptoms in his right shoulder in addition to the symptoms he had been having in his right hand. Claimant attributed these symptoms to using the computer mouse.

(4) Claimant did not request medical treatment from his employer and did not seek medical treatment on his own until January 1998 when he mentioned having these symptoms to his personal physician, Dr. Mark D. Sheern, while seeing him at an office appointment for his diabetes. Claimant said he also mentioned having pain in his midback and neck to Dr. Sheern. He was referred to Dr. K. N. Arjunan who recommended surgery. Claimant underwent a cervical discectomy and C5-6 fusion on March 20, 1998.

(5) Claimant testified that the symptoms started in his hand about a year before the trouble with his shoulder. As a result, he rearranged his work station, including trying to work standing up. Claimant said his employer knew about him rearranging his work station but claimant never said anything about an injury until he was advised that he needed surgery by Dr. Arjunan. Sometime during the week of March 15, 1998, claimant went to Mr. Ford's office and told him that his neck was worn out and he needed surgery. Arrangements were made for claimant to take vacation time even though it had not yet accrued and for his health insurance premiums to be paid while he was off work. All arrangements for payment were made through claimant's private health insurance coverage. Nothing was said about workers compensation before claimant left work for the surgery.

(6) Claimant initially testified that he told Mr. Ford that the head movements he was doing at work were wearing his neck out. During cross-examination, however, claimant conceded that he did not recall whether or not he mentioned his work activities being the cause of his injury.

(7) Claimant submitted all his medical bills to his private health insurance carrier. The time claimant was off work due to his surgery was at first applied against his vacation benefits and then he was on leave without pay. Nothing was said about claiming workers compensation benefits. Claimant also admitted that he was aware of the company policy that accidents be reported but was not sure whether the requirement was that he report injuries immediately or within something like 7 or 10 days. He further agreed that there was a poster in the hallway at work next to the coffee machine that advised of rights under the Workers Compensation Act although he could not say whether he noticed it before his surgery.

(8) In August 1998 claimant brought a claim for compensation to work and presented it to his employer. Respondent contends this was the first notice it received that claimant was alleging his neck injury was work related. Mr. Ford testified that claimant informed him of the surgery but denied claimant said anything about it being work related. Claimant just said that his neck was worn out but did not attribute it to work. The first time Mr. Ford became aware that claimant was alleging his condition was related to work was in August when claimant brought in a claim form. Mr. Ford immediately turned the claim in to his workers compensation insurance carrier. Mr. Ford testified that the company policy is that accidents be reported immediately. Employees are to report injuries to the office manager, Carol Longbine, and fill out the paperwork. He also said the poster supplied by the Division of Workers Compensation is prominently displayed. If claimant had said something to him about being hurt on the job, Mr. Ford would have immediately sent him to Carol Longbine to fill out the forms.

(9) Ms. Longbine testified that as the office manager her responsibilities included handling all paperwork related to workers compensation claims. She is the person designated by respondent to whom workers report injuries. The first time she became aware that claimant was alleging his neck condition was work related was on August 26, 1998 when she received the claim form from claimant.

#### **CONCLUSIONS OF LAW**

(1) The preliminary hearing Order Denying Compensation should be affirmed.

(2) The Workers Compensation Act requires an injured worker to provide notice of the accidental injury within 10 days of the accident.<sup>2</sup> But if "just cause" is shown that period is extended to 75 days.

(3) The Administrative Law Judge found that claimant failed to prove he provided notice within the required 10-day period. Based upon the record provided to date, the Appeals Board agrees. Simply telling the employer that he was having surgery because his neck was worn out does not alert the employer that claimant is making claim for a work-related injury. This is particularly so when done in a context of making arrangements for vacation leave and private health insurance coverage. The first time that claimant provided information that could be construed as notice of a work-related accidental injury was sometime in late August 1998 which would be outside the required 10-day period and also outside the 75-day period.

Based upon the Appeals Board's finding on notice, the remaining issues are rendered moot.

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<sup>2</sup> K.S.A. 44-520.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order Denying Compensation entered by Administrative Law Judge Bryce D. Benedict on March 5, 1999, should be, and the same is hereby affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1999.

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BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS  
Kendall R. Cunningham, Wichita, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director